

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)		
)		
v.)	CRIMINAL NOS.	1:05CR225
)		1:05CR421
LAWRENCE ANTHONY FRANKLIN,)		
)		
Defendant.)		

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Kevin V. Di Gregory and Neil Hammerstrom, Jr., Assistant United States Attorneys, and Thomas Reilly, Trial Attorney, U. S. Department of Justice, and defendant LAWRENCE ANTHONY FRANKLIN and his counsel, Plato Cacheris and John F. Hundley, have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

a. The defendant agrees to plead guilty to Counts One and Five of the superseding indictment and, pursuant to Rule 20, Federal Rules of Criminal Procedure, agrees to plead guilty to the one-count indictment filed against him in the Northern District of West Virginia.

b. Count One of the superseding indictment charges the defendant with conspiracy to communicate national defense information, in violation of Title 18, United States Code, Sections 793(d),(e) & (g). Count Five of the superseding indictment charges the defendant with conspiracy to communicate classified information to an agent of a foreign government, in violation of Title 50, United States Code, Section 783 and Title 18, United States Code, Section 371. The one-count West

Virginia indictment charges the defendant with the unlawful retention of national defense information, in violation of Title 18, United States Code, Section 793(e).

c. The maximum penalties for Count One of the superseding indictment and the West Virginia indictment are each a maximum term of 10 years of imprisonment, a fine of \$250,000, a \$100 special assessment, and 3 years of supervised release. The maximum penalty for Count Five of the superseding indictment is a maximum term of 5 years of imprisonment, a fine of \$250,000, a \$100 special assessment, and 3 years of supervised release. The United States does not oppose defendant's request that any sentence he receives on the West Virginia offense be made to run concurrent with the sentence imposed on Counts One and Five of the superseding indictment. The defendant understands that the supervised release term for each count is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Recommendation of Bureau of Prisons Facility

The United States does not oppose the defendant's request to the Court that he be recommended for designation by the Bureau of Prisons to serve any sentence he receives at the minimum security camp at FCI Cumberland. The parties recognize that it is solely within the discretion of the Bureau of Prisons to determine where the defendant is actually designated.

3. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The

statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

4. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

5. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally,

pursuant to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738, the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

6. Waiver of Appeal, FOIA and Privacy Act Rights

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

7. Waiver of DNA Testing

The defendant also understands that Title 18, United States Code, Section 3600 affords a defendant the right to request DNA testing of evidence after conviction. Nonetheless, the defendant knowingly waives that right. The defendant further understands that

this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing, and that the waiver forecloses any opportunity to have evidence submitted for DNA testing in this case or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charges admitted in this plea agreement.

8. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

9. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

10. Immunity from Further Prosecution

The United States will not further criminally prosecute defendant for the specific conduct described in the superseding indictment, the West Virginia indictment, and the statement of facts.

Therefore, defendant does not have immunity for crimes related to, but not specifically set out in, the indictments and statement of facts.

11. Dismissal of Other Counts

As a condition of the execution of this agreement and the Court's acceptance of the defendant's plea of guilty, the United States will move to dismiss the remaining counts of the superseding indictment against this defendant.

12. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
- d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.

- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

13. Use of Information Provided by the Defendant Under This Agreement

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance his guidelines range nor directly used against him in any other criminal prosecutions. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

14. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

15. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

16. Forfeiture and Pension-Related Matters

a. The defendant also agrees to the immediate forfeiture of his retirement pay, except for that portion of his retirement pay that is the equivalent of a survivor's annuity, which he hereby assigns irrevocably and without reservation to his wife, Patricia Franklin. Defendant understands that his wife's receipt of any portion of his retirement pay is dependent on her continued full cooperation and he agrees that, if the United States determines that his wife has failed to continue her full cooperation, the defendant will, upon request of the United States, execute a consent order of forfeiture covering the entire retirement pay including that portion not previously subject to forfeiture. Defendant understands that upon sentencing in this matter, pursuant to 5 U.S.C. § 8312,

both he and his spouse will be precluded from receiving any retirement pay, unless the provisions of 5 U.S.C. § 8318(e) are invoked.

b. The Government represents that, as of the present time, the defendant's wife, Patricia Franklin, has been fully cooperative. If, in the Government's opinion and discretion, Patricia Franklin continues to be fully cooperative up to and including the date of sentencing, the United States commits that it will invoke at the time of sentencing the provisions of 5 U.S.C. Section 8318(e) to provide Patricia Franklin the equivalent of a survivor's annuity.

17. Non-Disclosure Agreements

a. The defendant acknowledges that, in connection with his employment by the Department of Defense (DOD), he entered into certain agreements proscribing the unauthorized disclosure of classified information, confidential information, and other information acquired as a part of the defendant's performance of his official duties. This included the Defense Intelligence Agency (DIA) Secrecy Agreement signed by the defendant on July 31, 1979, and the Sensitive Compartmented Information Nondisclosure Statement signed by the defendant on July 17, 2001. The defendant acknowledges his continuing duties and obligations under these agreements, and they are hereby incorporated by reference.

b. The defendant understands his continuing legal obligation to refrain from the unauthorized oral or written disclosure of information belonging to the United States government or acquired by virtue of his United States government employment or derived from the activities which resulted in his conviction. Should the defendant at any time author or participate in the creation of any book, writing, article, film, documentary, or other production, or otherwise provide information for purposes of publication or dissemination, including but not limited to information provided through

interviews with writers or representatives of any media organization or entity, the defendant hereby agrees first to submit in a timely fashion such book, writing, article, film, documentary, or other production, or information, to DOD for timely pre-publication review and deletion of information which, in the discretion of these agencies, should not be published or disseminated on the grounds of national security or on any other grounds as are already the subject of the defendant's pre-existing agreements with these agencies.

c. To avoid any interference with the debriefing process, the defendant agrees that during the debriefing process he will provide no interviews nor have any other contact with the media, directly or indirectly.

d. Even after the debriefing process is complete, the defendant agrees that, in recognition of the non-disclosure agreements he has previously executed and pursuant to the terms of this plea agreement, he will never disclose to any person or entity, except to persons or entities specifically authorized by the United States government, any classified information, any confidential United States government information (whether or not such information is formally classified), and all other information acquired as part of his official duties or acquired through his employment with DOD.

e. The defendant agrees that he will notify DOD in a timely manner of any contacts he intends to have with any representative of the media in order to ensure that a representative of these agencies and/or other intelligence community representative is present, unless such presence is explicitly waived by DOD, to monitor the information being disseminated and, if necessary, to prevent the unauthorized disclosure of information. Such contacts include, but are not limited to, contacts in person, contacts by electronic means, and contacts via public or private mail carrier.

18. Assignment of Any Profits or Proceeds from Publicity

The defendant hereby assigns to the United States any profits or proceeds which he may be entitled to receive in connection with any publication or dissemination of information relating to his person, to his work at DOD, his unlawful activities, the facts and circumstances leading to his apprehension and conviction, or acquired from DOD files, and agrees that any such profits and/or proceeds constitutes the proceeds of his unlawful activity for purposes of 18 U.S.C. Section 794(d)(1)(A). This assignment shall include all profits and proceeds for the benefit of the defendant, regardless of whether such profits and proceeds are payable to himself or to others, directly or indirectly, for his benefit or for the benefit of the defendant's associates or a current or future member of the defendant's family. The defendant shall not circumvent this assignment by assigning the rights to his story to an associate or to a current or future member of the defendant's family, or to another person or entity who would provide some financial benefit to the defendant, to the defendant's associates, or to a current or future member of the defendant's family. Moreover, the defendant shall not circumvent this assignment by communicating with an associate or a family member for the purpose of assisting or facilitating their profiting from a public dissemination, whether or not such an associate or other family member is personally or directly involved in such dissemination.

19. No Foreign Contacts

The defendant shall have no contact with any foreign government or agents thereof, except with the express permission of DOD, and shall not seek or accept, personally or through another person or entity, any benefit from such foreign government or agent thereof, and should such a benefit be received by the defendant, or some other person or entity on his behalf, he hereby assigns

any such benefit to the United States. For purposes of this paragraph, any benefit provided to an associate of the defendant or to a current or future family member of the defendant which is related to, arises out of, or in recognition of, the defendant's unlawful activities, is deemed to be a benefit provided to the defendant himself.

20. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

21. Nature of the Agreement and Modifications

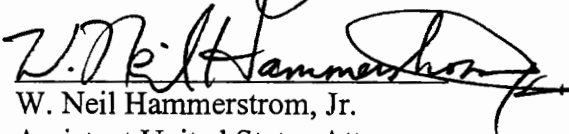
This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set

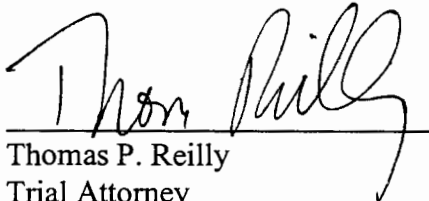
forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Paul J. McNulty
United States Attorney

By: 

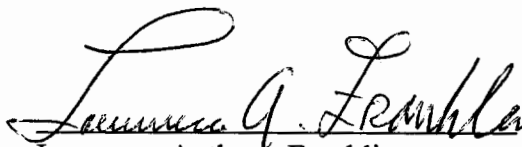
Kevin V. Di Gregory
Assistant United States Attorney


W. Neil Hammerstrom, Jr.
Assistant United States Attorney


Thomas P. Reilly
Trial Attorney
U. S. Department of Justice


Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

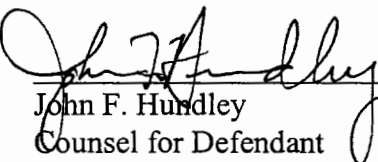
Date: 5 OCT 2003


Lawrence Anthony Franklin
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant his rights with respect to the pending indictment. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 10/5/05


Plato Cacheris
Counsel for the Defendant


John F. Hurdley
Counsel for Defendant